Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Southern California Edison Company (U338E); Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should not Impose Fines and Sanctions for the September 30, 2013 Incident at a Huntington Beach Underground Vault.	Investigation 15-11-006 (Filed November 5, 2015)

DECISION ADOPTING THE SETTLEMENT AGREEMENT

Table of Contents

Title **Page**

Table of Contents (Cont'd.)

Title **Page**

DECISION ADOPTING THE SETTLEMENT AGREEMENT

Summary

The California Public Utilities Commission (Commission) initiated the above entitled proceeding to investigate an accident, which occurred on September 30, 2013, at the Huntington Beach underground vault owned by Southern California Edison Company (SCE). The accident resulted in the death of Brandon Orozco, an employee of SCE's subcontractor, who had inadvertently removed an energized dead-break elbow while he was preparing the underground cables for testing.

SCE and the Commission's Safety and Enforcement Division (SED) are the only parties to this proceeding. SED is a Division of the Commission charged with enforcing compliance with the Public Utilities Code and other utility laws, and the Commission's rules, regulations, orders and decisions. SCE is an investor-owned utility subject to the Commission's jurisdiction under the Public Utilities Code.

SCE and SED have negotiated a settlement agreement to resolve all of the issues in the above entitled investigation proceeding (Settlement Agreement) and filed a motion recommending it for our approval. As detailed in the attached Appendix A, the three key components of the Settlement Agreement are: SCE's admissions, SCE's agreement to pay a fine of $2.010 million and SCE's agreement to improve its safety practices and procedures.

Together, these three components make the Settlement Agreement reasonable in light of the whole record, consistent with law, and in the public interest. We therefore approve and adopt it, and this decision acknowledges SCE's admissions, directs SCE to pay the fine of $2.010 million payable to the state's General Fund within 10 days of this decision and directs SCE to

implement the proposed series of enhancements to its safety practices and procedures as outlined in the Settlement Agreement. This decision closes the proceeding.

1. Background and Procedural History

1.1. The Accident

On September 30, 2013, Brandon Orozco, an employee of CAM Contractors (CAM), was fatally injured when he inadvertently removed an energized dead-break elbow while working in a Southern California Edison Company (SCE) underground vault in Huntington Beach, California (the Accident). At the time of the Accident, SCE had a contract with PAR Electrical Contractors Inc. (PAR) as its contractor. In turn, PAR had subcontracted a portion of its SCE contracted work to CAM.

SCE reported the Accident to the Commission's Safety and Enforcement Division (SED) on September 30, 2013. The SED engineer promptly responded to the Accident site and began the necessary on-site field investigation. On October 11, 2013, SCE provided SED its supplemental incident report in compliance with Decision (D.) 06-04-055, Appendix B. Immediately following the Accident, SCE initiated its own investigation of the Accident and voluntarily instituted several safety enhancements to its procedures and practices, which is further discussed in Section 1.3 of this decision.

1.2. SED Investigation, Recommendations and Report

In October of 2015, SED issued its Investigation Report concerning the Accident (SED Report) based on, *inter alia*, its:

1) Review of all relevant SCE documents and data request responses;

2) Field investigation and examination of physical evidence including the switch, dead-break elbows, conductors, and associated hardware;
3) Interviews of SCE representatives;
4) Review of the Coroner's report regarding Mr. Orozco; and
5) Review of the California Department of Industrial Relation's Division of Occupational Safety and Health's (DOSH's or formerly and more commonly referred to as Cal/OSHA's) case file and investigation reports concerning the Accident.

The SED Report alleges (1) SCE delegated its safety responsibilities to its contractor in violation of Commission decisions and California law; (2) SCE failed to ensure that its contractor and subcontractor performed their work safely, in violation of Public Utilities Code[1] Secion 451 and Rule 17.1 of General Order (GO) 128; and (3) SCE refused to provide SED its Investigation Report and a list of all documents SCE reviewed in its own investigation under a claim of attorney-client privilege. The SED Report recommends that:

1) SCE should accept and acknowledge responsibility for all work performed on SCE-owned and/or operated facilities, whether SCE employees or contractors perform the work;
2) SCE should prepare and submit a Corrective Action Plan that would adopt and implement measures to address the deficiencies identified in the SED Report and would ensure that any work on its facilities, regardless of who does the work, is performed in accordance with acceptable safety practices;
3) SCE's Corrective Action Plan should include modifications to its procedures to ensure that SCE

[1] All references to Code in this decision, unless otherwise specified, are to California Public Utilities Code.

performs appropriate cause analyses of electric incidents, implements effective corrective actions, and shares electric incident information and lessons learned throughout SCE's operations and with SED;

4) SCE's Corrective Action Plan should explicitly address each aspect of the settlement approved in D.15-07-014, arising from the investigation of an electric incident at the Kern power plant owned by Pacific Gas and Electric Company (PG&E) (Order Instituting Investigation (OII) 14-08-022 or Kern Power Plant Fatality OII), and identify how SCE would improve its operations to meet or exceed the requirements of that settlement; and

5) SCE should provide its own internal Investigation Report and all other information for which it has claimed to be attorney-client privileged, subject to appropriate protection for any confidential information.

Based on the SED Report, on November 5, 2015, the Commission initiated the above entitled proceeding (Huntington Beach OII).

1.3. SCE's Post-Accident Actions and Voluntary Pre-OII Safety Enhancements

Following the Accident, SCE promptly investigated the Accident and voluntarily made important improvements in its contractor safety programs and incident investigation practices and procedures. SCE did so prior to the Commission's institution of this Huntington Beach OII in November of 2015. In February of 2015, SCE adopted these voluntary initiatives as part of its Contractor Safety Management (CSM) Corporate Standard (ST-2) (February 2015 CSM). By June of 2015, SCE had also rolled out its Safety Incident Management (SIM) Corporate Standard (ST-1) (June 2015 SIM). We note, June 2015 SIM was SCE's first company-wide safety incident management procedure. Also in July of 2015, SCE voluntarily revised its Environmental Health and Safety Handbook

for Contractors (Contractor Safety Handbook) to incorporate all of its voluntary safety procedure improvements.

The February 2015 CSM, June 2015 SIM Standards and the Contractor Safety Handbook should be described in some detail because they comprise SCE's voluntary efforts to improve contractor safety, and they were implemented well before this OII was instituted. These facts, amongst numerous others, will be considered in this proceeding in assessing whether the proposed fine under the Settlement Agreement is reasonable under all the circumstances. In addition, the discussion below shows how SCE's pre-OII voluntary corrective actions set the necessary framework and foundation for the refined corrective action plan resulting in the Settlement Agreement. As such, they are detailed below, showing the direct interconnection between SCE's pre-OII efforts and the related safety refinements negotiated and proposed in the Settlement Agreement.

1.3.1. Contractor Qualification Criteria, Evaluation and Updates

The February 2015 CSM divided all SCE contractors into two categories, Tier 1 or Tier 2, depending on the inherent risk level of the contractors' work. It defined Tier 1 activities as those work, "without the implementation of appropriate safety measures, are potentially hazardous or life-threatening."[2] The February 2015 CSM also adopted the Experience Modification Rate (EMR) for the safety evaluation of Tier 1 contractors. EMR is a risk assessment tool used to review and rate particular contractor's safety record as compared to others in the same industry. As discussed later in this decision, under the Settlement Agreement, the evaluation criteria for Tier 1 contractors will be further expanded to extend beyond the EMR (voluntarily adopted by SCE under February 2015

[2] Settlement Agreement at 2.

CSM). Furthermore, the Settlement Agreement provides that this evaluation process will be performed by a qualified Third Party Administrator (TPA) to provide yet another layer of protective scrutiny.

The February 2015 CSM required heightened scrutiny of contractors by SCE with EMRs greater than one (1) before they can perform work for SCE. As discussed later in this decision, under the Settlement Agreement, these contractors (with EMRs greater than one (1)) are "Conditional Contractors" and additional safety requirements apply to their work, both before they start work and after, in the field.

The February 2015 CSM required that any contractor wishing to use a subcontractor must notify the SCE (or Edison) Representative (ER) in advance. SCE approval is required before hiring any subcontractor, and all Tier 1 subcontractors must meet the heightened requirements for the Tier 1 contractors. At least annually, SCE's Supply Management must conduct a meeting of Tier 1 contractors. The meeting discussion must include best safety practices, industry experience and the expectations of SCE and contractors. Supply Management also updates the EMRs of all Tier 1 contractors at least annually. As discussed later in this decision, under the Settlement Agreement, this annual update will be done by the TPA.

1.3.2. Tier 1 Contractor Field Monitoring

In addition to the safety-related field requirements SCE already imposes on its contractors through its Master Service Agreement and the newly heightened screening and update requirements discussed above, the February 2015 CSM added further field requirements for Tier 1 contractors. Prior to the commencement of work, the ER must conduct a contractor orientation using the Environmental, Health and Safety Contractor Orientation Checklist and Job Aid.

Then, within fifteen days of receiving a notice to proceed or in advance of the start of work, the Tier 1 contractor must complete and sign the Checklist and submit a project and site-specific Environmental, Health and Safety Plan. Prior to the commencement of Tier 1 contractor work, using the Field Safety Assessment Job Aid, the ER must prepare a Field Safety Assessment Schedule. All ERs managing Tier 1 contractors must be trained to understand SCE's CSM standard and retrained on a biennial basis.

As discussed later in this decision, under the Settlement Agreement, SCE, through its Corporate Health & Safety (CH&S), must increase the frequency of its ER field monitoring and conduct additional Contractors Safety Quality Assessments (CSQAs) as well as field monitoring (by a Safety and Environmental Specialist). These are all additional safety enhancements beyond those required as part of SCE's pre-OII voluntary safety undertakings.

1.3.3. Contractor Safety Incident Reporting and Investigation

Although various SCE Organizational Units (OUs), including Transmission and Distribution, had unit-specific safety incident reporting practices and requirements for contractors, the June 2015 SIM Standard was the first enterprise-wide standard on the subject. It required all SCE contractors to immediately report all injuries and illnesses beyond first aid (including close calls) to their ER. This broadened enterprise-wide reporting standard and scope of reportable incidents exceed the reporting required by DOSH (or formerly and more commonly referred to as Cal/OSHA). Within one business day, the contractor then must complete the Contractor Incident and Investigation Report form and submit it to CH&S, Supply Management and the ER. Within five business days, the contractor must submit Section 2 of that Report which

contains its investigation results. This investigation form requires the contractor to identify the cause and recommend corrective actions. SCE can then require the contractor to make changes or improvements in the incident report if SCE finds it unsatisfactory.

The Settlement Agreement further builds on the above pre-OII voluntary safety enhancement requirements by making CH&S responsible for reviewing all lessons learned and appropriate corrective actions from incidents involving contractors and subcontractors. Where appropriate, the Settlement Agreement requires SCE, through its CH&S, to initiate all necessary enterprise-wide safety enhancement response(s).

1.4 The Huntington Beach OII Proceeding

Pursuant to its investigative authorities under Code § 315 and Rule 5.1 of the Commission's Rules of Practice and Procedure (Rules), on November 5, 2015, the Commission issued this OII (Huntington Beach OII) to investigate SCE's actions relating to the Accident by reviewing:

- SCE's compliance with the applicable State laws, GOs, regulations and rules including, without limitation, Code §§ 451, 314, and 582;
- Whether any of SCE's acts or omissions contributed to the Accident;
- What actions SCE has taken, or should take, to prevent another similar incident from occurring (including an examination of whether "industry best practices" exist and, if so, whether SCE has incorporated these practices into its operations);
- The necessary breadth of those actions, including whether they should be area-specific or system-wide;
- SCE's decision not to disclose its Investigation Report and a list of documents SCE reviewed in its investigation to SED; and

- Any fines or penalties the Commission believes should be imposed on SCE for any possible violations that are proven in this investigation.

On January 5, 2016, the assigned Commissioner and Administrative Law Judge (ALJ) held a prehearing conference (PHC). SCE and SED agreed with the preliminary scope of this proceeding as set forth in the Huntington Beach OII, noted some discovery issues and agreed to explore ways to move forward on those issues. The Assigned Commissioner and ALJ directed the parties to meet and confer and submit a joint proposed schedule and a discovery dispute status report by January 15, 2016.

SCE and SED thereafter conferred regarding their discovery dispute and agreed that in lieu of receiving SCE's Investigation Report, SED would propound detailed factual data requests to SCE regarding the Accident and SCE's corrective actions. SCE responded to SED's data requests. SCE and SED submitted their joint proposed schedule and discovery status update on September 1, 2016, as directed, noting that they resolved their discovery dispute.

SED and SCE (the Settling Parties) began settlement discussions in early May 2016. The Settling Parties advised the ALJ of the progress of negotiations and reported that they were working toward finalizing the Settlement Agreement and filing a motion for its approval by the end of October 2016.[3] At the request of the Settling Parties, the ALJ facilitated these discussions by extending deadlines for the submission of adversarial testimony and hearings and granting several deadline extensions to submit a motion to approve

[3] The Settling Parties submitted several settlement status updates on August 1, September 1, and October 24, 2016. Each update confirmed that the Settling Parties are making progress toward a settlement, and the October 24, 2016 report indicated that they were finalizing a settlement agreement and planning to file a joint motion for adoption of the settlement agreement in the very near future.

settlement. Eventually, the Settling Parties reached a settlement (the Settlement Agreement, attached as Appendix A). Because there are no other parties to this proceeding, the Settling Parties have not held the Rule 12.1(b) settlement conference.

1.5 The Motion and The Proposed Settlement Agreement

On December 15, 2016, the Settling Parties filed the Joint Motion for Approval for Settlement Agreement to resolve the issues in the herein proceeding (Motion). Through the Settlement Agreement, the Settling Parties agree to settle, resolve, and dispose of all claims, allegations, liabilities, and defenses within the scope of the Huntington Beach OII.

2. The Settlement Agreement

In general, the three main components to the Settlement Agreement are a fine, additional safety enhancements, and admissions. The Settlement Agreement also contains other general terms. The three main components of the Settlement Agreement are discussed further below.

2.1. Fine

The Settlement Agreement includes a fine of $2.010 million pursuant to Code §§ 2104.5, 2107 and 2108. SCE must pay this fine within 10 days of the effective date of this decision, to be deposited in to the state's General Fund.

The Settling Parties did not identify a specific number of violations nor the number of days associated with SCE's alleged imprudent safety oversight of the contractors at the Huntington Beach vault. However, they agreed to use the number of days Mr. Orozco was employed by CAM for the purpose of the fine calculation, which was 67 days. Using 67 days, the proposed fine of $2.010 million comes to a fine of $30,000 per day.

2.2. Additional Safety Enhancements

As for safety enhancements, the Settlement Agreement builds on SCE's post-Accident and pre-OII voluntary safety enhancements, detailed in Sections 1.3, 1.3.1, 1.3.2 and 1.3.3 of this decision and requires additional safety enhancements beyond those already adopted and implemented, as part of its post-Accident and pre-OII voluntary safety enhancements (SCE's Corrective Action Plan.) Based thereon, SCE, going forward, agrees to (i) further improve its processes for evaluating contractors and subcontractors through the use of a TPA, expanded qualification criteria, and a special field monitoring program for contractors and subcontractors requiring expedited retention, (ii) increase the frequency of observing contracted field work by SCE representatives or their designee(s); (iii) perform CSQA to document implementation of contractual safety commitments; and (iv) employ personnel with special safety training to conduct field observations and assessments of Tier 1 contractors.

Under the Settlement Agreement, all these additional safety enhancements and changes to SCE's Contractor Safety Program, including those added by the Settlement Agreement and Corrective Action Plan, will be implemented by no later than the end of calendar year 2017. SCE will also submit quarterly reports to SED regarding its progress, implementation and performance of the enhancements to its Contractor Safety Program for two years after the Settlement Agreement is final.

Specifically, those additional safety enhancements include following changes to its safety programs and policies and standards relating to Tier 1 contractor. SCE agrees to implement Tier 1 Contractor Safety Program and revised Handbook for Contractors which are attached hereto as Appendix B and

C, respectively. These additional safety enhancements will strengthen its Tier 1 Contractor Safety Program by:

1) Retaining a TPA who will collect safety data on potential contractors and subcontractors, evaluate the safety data according to SCE's criteria, and gather updated information annually on contractors and subcontractors previously found qualified for SCE work;
2) Expanding the criteria for Tier 1 contractor and subcontractor qualification which the TPA will use to evaluate the safety qualifications of Tier 1 contractors and subcontractors. The expanded criteria will include at a minimum: Total Recordable Incident Rate, Days Away, Restricted or Transferred Rate, five-year fatality history, and a three-year OSHA repeat citation history. The TPA also will evaluate the contractor's Injury and Illness Prevention Program and reported injuries to the public on a qualitative basis. The TPA will conduct a yearly evaluation of all SCE Tier 1 contractors and subcontractors;
3) Establishing safety scoring requirements for contractor and subcontractor performance based on historical performance and safety program review. Tier 1 contractors and subcontractors scoring high will generally be at or better than industry averages and will be eligible for work at SCE facilities. Tier 1 contractors and subcontractors scoring low will generally be substantially worse than industry averages and will not be eligible for work at SCE facilities. Tier 1 contractors and subcontractors scoring in the middle range will generally be worse than industry averages and shall be subject to additional review and other requirements to be retained by SCE;
4) Instituting a protocol for expedited retention of Tier 1 contractors and subcontractors whose retention is sufficiently urgent or specialized to preclude the ordinary TPA evaluation process. The protocol will include senior management approval from the

appropriate OUs and a special field monitoring program for such contractors and subcontractors that will remain in effect until the regular qualification process is complete;

5) Enhancing SCE's representative's field safety observations depending on the level of risk posed by the work, prior experience of the contractor and its workforce, prior safety record and TPA scoring;
6) Performing CSQA to determine if contractual safety commitments are implemented in the field using field observations and a review of contractor documentation and worker qualification;
7) Hiring full time Safety and Environmental Specialists (SES) to perform field monitoring including field observations and assessments of Tier 1 contractors. SES monitoring reports will be uploaded to a centralized data base for analysis and reporting;
8) Reviewing lessons learned and corrective actions from incidents involving contractors and subcontractors for possible enterprise-wide application; and
9) Submitting quarterly reports to SED regarding its progress, implementation and performance of the safety enhancements listed above for two years after the Settlement is final.

2.3. Admissions

In the Settlement Agreement, SCE admits as follows:

1) PAR did not seek SCE's approval to subcontract work to CAM;
2) When SCE later became aware that CAM was a PAR subcontractor, it did not object;
3) SCE did not manage or oversee the work performed by the CAM crew;

4) SCE did not evaluate Mr. Orozco's qualifications to perform work in accordance with accepted, safe practices;
5) SCE did not evaluate Mr. Orozco's familiarity with its electric facilities, schematics and plans; and
6) SCE did not provide specific instructions to Mr. Orozco on how he should safely perform work he was doing at the time the incident occurred.

SCE does not expressly admit that it is responsible for "ensuring" contractor safety. But because the Settlement Agreement is a compromise of the parties' positions to avoid a lengthy litigation, we accept SCE's general admissions of the underlying facts to be adequate here instead of insisting express admissions that it is responsible for "ensuring" contractor safety or finding that SCE's conduct related to this incident violated specific laws, Commission decisions or orders.

We however remind SCE that nothing in this Settlement Agreement relieves SCE from its safety responsibilities imposed on it by law or Commission rules, orders or decisions. This includes SCE's long standing duties under *Snyder v. Southern California Edison Company*,[4] which prohibits it from delegating to an independent contractor responsibility for compliance with Commission safety rules and regulations governing activities that are a necessary part of its business as an owner and operator of utility facilities.

2.4. Miscellaneous Issues and Terms

The SED Report claimed that SCE "refused" to provide ESRB[5] its Investigation Report and a list of all documents SCE reviewed in its own

[4] 44 Cal.2d 793 (1955).

[5] Commission's Electric Safety and Reliability Branch.

investigation of the incident, under a claim of attorney-client privilege. SED recommended that: SCE should provide SED its internal investigation report and all other information for which it has claimed attorney-client privileges, subject to appropriate protection for any confidential information.[6]

SCE acknowledges that it is entitled to assert claims of privilege and work product, but such claims could not and would not prevent SED from seeking and acquiring factual information regarding the incident from SCE.

During the discovery phase of this proceeding, the Settling Parties resolved this issue. SED agreed that in lieu of its demand for SCE's Investigation Report, SED would instead propound detailed data requests regarding the Accident and SCE's corrective actions. SCE responded to those data requests.

In sum, the previously disputed issue surrounding SCE's Investigation Report is moot. Going forward, the Settlement Agreement does not preclude SCE from claiming or SED from challenging any claim by SCE in future proceedings that SCE's investigation reports, root cause analyses or similar documents related to its investigations of incidents are protected from disclosure to SED under the attorney-client privilege and attorney work-product doctrine.

3. Standard of Review

The Settling Parties in their Motion seek Commission approval and adoption of the Settlement Agreement and its terms. Under Rule 12.1 of the Commission's Rules, to approve and adopt a settlement, the Commission must find that a settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

[6] SED Report at 12.

And for settlement agreements which include a fine or penalty, D.98-12-075 also sets forth the following five factors that must be examined in determining whether the proposed fine is reasonable:

1) The severity of the offense, including consideration of economic harm, physical harm, harm to the regulatory process, and number and scope of violations, with violations that cause physical harm to people or property being considered the most severe and violations that threatened such harm closely following;
2) The conduct of the utility in preventing, detecting, disclosing and rectifying the violation;
3) The financial resources of the utility (to ensure that the degree of wrongdoing comports with the amount of fine and is relative to the utility's financial resources such that the amount will be an effective deterrence for that utility while not exceeding the constitutional limits on excessive fines);
4) The amount of fine in the context of prior Commission decisions; and
5) The totality of the circumstances in furtherance of the public interest.[7]

The above factors closely mirror the considerations listed in Code § 2104.5.[8] While that code section applies to gas pipeline safety, the Commission has analogously applied its applications in other types of proceedings.[9]

[7] D.98-12-075 at 10 (listing the five factors).

[8] *See* Code § 2104.5.

[9] *See*, e.g., D.11-11-001 (OII into the Operations and Practices of PG&E regarding the Gas Explosion and Fire on December 24, 2008 in Rancho Cordova, California in I.10-11-013); and D.04-09-062 (OII into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless in I.02-06-003).

4. Discussion

4.1. Overview

The preliminary scope of this proceeding was set in the Huntington Beach OII and later confirmed in the Assigned Commissioner's Scoping Memo Ruling which provided that the purposes of this investigation proceeding are to examine SCE's actions and omission's surrounding the Accident,[10] determine appropriate corrective measures, if appropriate,[11] and impose fine or other remedies, if appropriate.[12]

As discussed below, the Settlement Agreement addresses all issues in the scope of this proceeding, including SED's recommendations, meets the Rule 12.1(d) requirements, and is reasonable under D.98-12-075 five-factor analysis. Because the Settlement Agreement involves a proposed fine, we will first discuss the reasonableness of the proposed fine by reviewing the five factors, under D.98-12-075. Then we will discuss how the Settlement Agreement as a whole addresses all issues in this proceeding, including SED's recommendations, and complies with Rule 12.1(d) requirements.

---

[10] *See* first two issues identified in the Huntington Beach OII and Scoping Ruling: (1) Review SCE's compliance with the applicable safety laws, GOs, regulations and rules including Code §§ 451, 314, and 582; and (2) Examine whether any of SCE's acts or omissions contributed to the Accident.

[11] *See* second two issues identified in the Huntington Beach OII and Scoping Ruling: (1) Review actions SCE has taken, or should take, to prevent another incident from occurring (including an examination of whether "industry best practices" exist and, if so, whether SCE has incorporated these practices into its operations); and (2) Determine the necessary breadth of those actions, including whether they should be area-specific or system-wide.

[12] *See* last two issues identified in the Huntington Beach OII and Scoping Ruling: (1) Review whether SCE should have disclosed its Investigation Report and a list of documents SCE reviewed in its investigation on to SED (issue is moot); and (2) Determine whether any fines or penalties should be imposed on SCE for any possible violations that are proven in this investigation.

4.2. Reasonableness of the Proposed Fine Under D.98-12-075

4.2.1. Severity of Offense

The first factor under D.98-12-075 is the severity of the offense. The severity of the offense factor takes into account physical and economic harms, harm to the regulatory process and the number and scope of violation. In view of those four considerations, as discussed below, severity of offense here is very high.

The most apparent and notable of the considerations here is the physical harm. D.98-12-075 provides that the most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.[13] Here, Mr. Orozco died as a result of this Accident. Such loss of human life presents the most severe form of offense or violation.

As for the economic harm, D.98-12-075 provides that the severity of a violation increases with (i) the level of costs imposed on the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Here, we can infer significant financial impacts to the family of the decedent which maybe under litigation, and there is no evidence of unlawful gain or benefit to SCE resulting from this Accident. In fact, SCE also suffered property damage to its vault (the Accident location) and suffered operational impacts with all the attendant financial implications. Although the economic harm figures from this Accident have not been quantified and presented, we can surmise that economic harm here is undoubtedly significant.

As for the harm to the regulatory process, D.98-12-075 provides that a "high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements."

[13] D.98-12-075 at 188-190.

Because the allegation by SED and related discovery dispute regarding SCE's refusal, *inter alia*, to provide its own internal Investigation Report based on claim of attorney-client privilege and/or work-product, are resolved and moot, the Settlement Agreement and SCE's admissions do not involve any Rule 1.1 violations, other ethical violations, or violations of reporting or compliance requirements associated with this Accident.

Last of the consideration for the severity of offense review is the number and scope of violations. Naturally, a "single violation is less severe than multiple offenses. A widespread violation that affects many consumers is a more severe than one that is limited in scope. For a 'continuing offense,' [ ] Code § 2108 counts each day as a separate offense."[14] In the Huntington Beach OII, we are looking at a single incident, and we will view it, in the overall severity spectrum, as less than the severest of offense and not as a continuing violation.

Weighing all the above four considerations of the first factor, on balance, it seems the severity of the offenses which contributed to this Accident is high but not the highest. We therefore find that the proposed daily fine of $30,000, instead of the statutory maximum daily fine of $50,000, is justified here.

4.2.3. Conduct of the Utility

The second factor focuses on the utility's actions in preventing, detecting, disclosing and rectifying the violation. As discussed below, SCE's admitted conduct preceding the Accident contributed to the Accident. However, SCE's conduct following the Accident to promptly notify the Commission's SED, perform investigation and take voluntary corrective actions should also be recognized.

[14] *Id*. at 72-73.

As to SCE's pre-Accident conduct, SCE acknowledges the unfortunate series of its admitted actions which preceded the Accident, which included its failure to detect unsafe practice and failure to prevent the Accident. If there was evidence of pattern of similar prior violations or intentional violations, they would be considered as aggravating factors. However, there is no such aggravating evidence in this case. The facts suggest this Accident involves an unfortunate and inadvertent isolated occurrence.

As for SCE's post-Accident and pre-OII conduct, we note that SCE reported the Accident on the same day as the Accident, and voluntarily updated its incident report. In addition, as detailed in Sections 1.3, 1.3.1, 1.3.2, and 1.3.3 above, after the Accident and before the OII was instituted, SCE significantly and voluntarily overhauled its safety practices and procedures concerning its contractors and subcontractors. This includes SCE's new enhanced review, oversight and monitoring of its contractors to better detect and prevent unsafe contractor activities, under its June 2015 SIM Corporate Standard (ST-1), which has been applied enterprise-wide. SCE has also agreed in this Settlement Agreement to further strengthen its already enhanced safety practices and procedures and to implement significant additional enhancements to its Contractor Safety Program. These are important factors that mitigate against the imposition of a penalty larger than the one agreed to in this Settlement Agreement.

Upon weighing the above aggravating and mitigating facts, on balance, we find that the proposed fine, which is less than the maximum daily fine of $50,000, is reasonable in light of the notable mitigating pre-OII actions of SCE and the additional safety enhancement commitments in the Settlement Agreement. We

therefore find that the daily fine of $30,000, as proposed, is justified upon our review of this second factor.

4.2.4. Financial Resources of the Utility

The third factor is the financial resources of the utility. Here, the Commission must ensure against excessive fines while imposing an effective fine.[15] In D.98-12-075, the Commission explained:

> Effective deterrence … requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.[16]

In other words, an effective fine is one that reflects the severity of the harm (the first factor examined above) and is also proportionate to the offending entity. That means a fine should be high enough to impact the offending entity in such a way to send an effective message to the offending entity and those similarly situated to deter future similar accidents, without putting them out of business.[17]

Here, SCE is one of the large investor-owned energy utilities in California with significant financial resources and sizable budget (with rate base requirements in excess of $5 billion per year) to support its operation.[18] In

---

[15] *Id*. at 7.

[16] *Id*. at 58-59.

[17] *Ibid.*

[18] *Ibid.*

addition, as against another larger investor-owned utility, PG&E, the Commission recently assessed a fine of $2.300 million for a very similar subcontractor fatality accident which occurred during the demolition of an unused fuel oil tank at PG&E's Kern Power Plant which led to the Commission's issuance of an OII in that instance (Kern Power Plant Fatality OII).[19] Kern Power Plant Fatality OII is further discussed in the next section. In fact, SED expressly recommended in the SED Report that decision, D.15-07-014, including the settlement agreement adopted therein with fine and corrective plan, should guide the Commission in this Huntington Beach OII because the facts and issues presented were so similar.

With that backdrop, for SCE, a fine of $2.010 million, slightly lower than fine assessed against PG&E for its Kern Power Plant Fatality OII, is appropriate and reasonable for this Accident. Although SCE's fine amount here is lower than that assessed against PG&E, it is fair and reasonable in view of SCE's smaller operation (as compared to PG&E) and SCE's post-Accident mitigating conduct. This fine amount is reasonably proportionate to SCE and is proportionate to the severity of safety violations at issue, which was mitigated, in part, by SCE's pre-OII safety response to the Accident. This fine sends the message to SCE and other utilities, that safety must be taken seriously and the same or similar future violations must be prevented. This fine comports with the degree of wrongdoing and is relative to the utility's financial resources such that the amount will be an effective deterrence for that utility while not exceeding the constitutional limits on excessive fines.

[19] D.15-07-014.

4.2.5. Comparisons to Prior Commission Decisions

The fourth factor is whether the fine is reasonable in light of the Commission's prior decisions. The Settling Parties presented several recent Commission decisions involving allegations of safety related violations and fines, as follows:

PG&E Kern Power Plant Fatality OII Decision (D.15-07-014)
Of the recent proceedings before the Commission, PG&E Kern Power Plant Fatality OII proceeding is the most comparable proceeding, factually and legally, to the Huntington Beach OII. The PG&E Kern Power Plant Fatality OII proceeding, as with Huntington Beach OII, involved an investigation into an accident resulting in a subcontractor fatality. The accident happened during a project to demolition a fuel oil tank at the PG&E's Kern Power Plant. SED alleged that PG&E failed to provide necessary safety oversight over the subcontractor work, raising the issue of utility's safety duties when the utility's contractors or subcontractors work on utility's property. Upon SED's investigation and the institution of the OII into that accident, a settlement was reached, and it resulted in D.15-07-014 which adopted the settlement agreement which included PG&E's admissions and acceptance of responsibility for failing to provide adequate safety oversight, an agreement to pay a fine of $2.3 million, an agreement to implement a Corrective Action Plan (PG&E's agreement to implement safety enhancements, on a company-wide basis) and a ratemaking offsets.[20]
PG&E Mission Substation Fire OII Decision (D.06-02-003)
This OII looked into an accident at PG&E's Mission Substation, which did not involve a fatality. In this decision, the Commission approved a settlement agreement between PG&E and SED to resolve SED's allegation, *inter alia*, that the fire was the result of PG&E's failure to prevent an unsafe condition. Under this settlement, PG&E agreed to pay a fine of $500,000 and to undertake a number of remedial measures. This settlement was reached after PG&E had served its prepared testimony in which it admitted that its failure to follow its own fire protection recommendations exacerbated the extent of the fire and the extent of the resulting outage.
Malibu Canyon Fire OII / Decision Adopting Settlement 1 – SCE (D.13-09-028)
This OII looked into the fire which broke out in Malibu Canyon involving SCE (OII.09-01-018), which did not involve a fatality. In this decision, the Commission approved a settlement agreement between SCE and SED, after an investigation into a fire caused by several downed utility poles. SCE, there, admitted that one of its poles was overloaded in violation of GO 95 due to the facilities that were attached to the pole by another utility. SCE also admitted it violated Code § 451 when it failed to take prompt action to prevent pole overloading. Finally, SCE admitted that it violated Rule 1.1 of the Commission's Rules when it withheld pertinent

[20] PG&E agreed to some ratemaking offsets to fund safety improvements for its customers in that case; however, as the Settling Parties correctly note, such ratemaking offset issue does not apply to the Huntington Beach OII.

information from SED and the Commission. As a result, SCE agreed to pay a fine of $20 million and also agreed to assess utility poles in the Malibu area for compliance with GO 95 safety factors and SCE's internal safety standards.
Malibu Canyon Fire OII / Decision Adopting Settlement 2 – Carrier Settlement (D.12-09-019) Also in the above Malibu Canyon Fire investigation, OII.09-01-018, the Commission conditionally approved a settlement agreement between SED and several telecommunications carriers (AT&T, Sprint, and Verizon Wireless) - the Carrier Settlement Agreement. SED alleged safety GO 95, Rule 1.1, and Code § 451 violations against AT&T, Sprint, and Verizon Wireless. Under the settlement, the carriers expressly acknowledged unsafe conditions which violated GO 95 and agreed to pay a total of $12 million each. Of the combined $12 million, $6.9 million was paid as fine and the remainder was allocated to safety enhancement programs (*e.g.*, projects to survey joint-use poles in SCE's service territory for compliance with GO 95 safety factor requirements and strengthen utility poles in Malibu Canyon.)
Malibu Canyon Fire OII / Decision Adopting Settlement 3 – NextG (D.13-09-026) The Commission approved another settlement in the above Malibu Canyon Fire investigation between SED and telecommunications carrier NextG. SED also alleged safety GO 95, Rule 1.1, and Code § 451 violations against NextG. In settlement, NextG made significant and specific factual admissions regarding its safety violations and Rule 1.1 violation. It agreed to pay $8.5 million and to conduct a statewide safety audit of its pole attachments to assure compliance with GO 95.

The Settling Parties presented the above five decisions as general points of reference on how the Commission has resolved recent safety proceedings. They provide a wide range of outcomes. We find the majority of the circumstances underlying the above decisions and related legal issues are distinguishable from those of Huntington Beach OII.[21] For these reasons, we disregard the last four decisions listed above as unhelpful in our review here.

[21] The latter four cited decisions, referenced by the Settling Parties and noted above, present significantly dissimilar factual and legal issues as compared those of the Huntington Beach OII. None of these four cases involve contractors or subcontractors safety issues, and none of these four cases involve loss of life. The last three involve telecommunications companies' attachments to energy utility poles and related safety and maintenance issues. Last two involve telecommunications companies, not energy utility. Most involve significantly more specific legal and liability admissions (*e.g.*, Rule 1.1 violations and the violation of Commission GOs or safety laws). All do not present notable pre-OII actions that justify mitigation.

In contrast, PG&E Kern Power Plant Fatality OII Decision, the first decision above, is both comparable factually and legally to the facts before us here. We therefore will look to it for guidance. The PG&E Kern Power Plant Fatality OII, as in this Huntington Beach OII, involved a subcontractor fatality resulting from an isolated accident on the utility's property. Following the institution of the Kern Power Plant Fatality OII to initiate an investigation proceeding, PG&E and SED reached a settlement agreement in that proceeding, and the Commission approved that settlement agreement in D.15-07-014 (PG&E Settlement).

Similar to the Settlement Agreement in this Huntington Beach OII, in the PG&E Settlement, PG&E made several admissions[22] that its contractor oversight was not as vigilant as it should have been. Also, PG&E agreed, *inter alia*, to implement, as SCE agreed to do, on a company-wide basis, a Corrective Action Plan that includes a Contractor Safety Program and Enterprise Causal Evaluation Standard and pay a significant fine ($2.300 million), as SCE agreed to do.[23]

There are some differences in the issues presented in the PG&E Settlement and the Settlement Agreement here. First, PG&E did not undertake voluntary pre-OII safety enhancements; but SCE did. Second, PG&E made express admissions of violations of safety laws and Rule 1.1 of the Commission's Rules; but SCE's admissions are more general. These distinctions are notable and justify a lower fine of $2.010 million in this Huntington Beach OII than that imposed on PG&E in the Kern Power Plant Fatality OII, which was $2.300 million.

---

[22] D.15-07-014 at 12; *See also*, Appendix A at 18.

[23] PG&E also agreed to $3.2 million in ratemaking offsets to fund safety improvements for its customers in that case; however, as the Settling Parties correctly note, such ratemaking offset issue does not apply to the Huntington Beach OII.

That said, as for the comparison of the safety enhancements between the two cases, we find that the enhancements set forth in the Settlement Agreement and agreed to by SCE in this Huntington Beach OII are also consistent with the corrective actions PG&E agreed to take as part of the settlement approved in Kern Power Plant Fatality OII and D.15-07-014, which requires, *inter alia*:

- Development and implementation of a contractor safety program standard;
- Pre-qualification of contractors performing high-risk work;
- Standard safety contract terms for both contractor obligations and utility rights;
- Safety oversight in the field;
- Safety performance evaluation at end of the job or at regular intervals for continuing contractors;
- Involvement of Corporate Health & Safety; and
- Enterprise-wide consideration of lessons learned from safety; and incidents including those involving contractors.

Finally, we also give weight to SED's opinion, set forth in the Motion, that SCE's Contractor Safety Program resulting from the Settlement Agreement is comparable to, if not an improvement in many respects upon, the contractor safety program that PG&E agreed to implement in the Kern Power Plant Fatality OII settlement.

In sum, upon comparison of the Huntington Beach OII Settlement Agreement to PG&E Kern Power Plant Fatality OII decision, including the adopted settlement agreement therein, and in view of the mitigating facts in this Huntington Beach OII, that were not present in the PG&E Kern Power Plant fatal accident case, we find that a fine of $2.010 million, slightly lower than that imposed in PG&E case, is reasonable.

4.2.6. Totality of the Circumstances

The fifth and final factor we consider in evaluating the proposed fine is the totality of the circumstances, with an emphasis on protecting the public interest. As we discussed in detail above, a $2.010 million in fine is reasonable, looking at all the circumstances, including both mitigating and aggravating factors. SCE's degree of wrongdoing, particularly its pre-Accident conduct discussed above, has been acknowledged by its admissions. On the other hand, SCE swiftly acted to report, investigate and implement corrective safety plan after the Accident – all before the institution of this OII or the Commission's issuance of any directive. This post-Accident conduct therefore serves as a mitigating factor here.

That said, we cannot stress enough the importance of the safe practices and the attendant public interests. We must protect the public interest by assessing a fine sufficient to deter another similar tragedy. In D.98-12-075, the Commission explained the policy of deterrence to justify a fine:

> The purpose of a fine is to go beyond restitution to the victim and to *effectively deter further violations* by this perpetrator or others…Effective deterrence creates an incentive for public utilities to *avoid violations*. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. [*Emphasis added*.][24]

As we try to determine whether the proposed fine would be an effective deterrence, we also acknowledge that the proposed fine combined with other elements of the Settlement Agreement, further numerous public interest benefits by adopting the fine, as proposed in the Settlement Agreement.

[24] D.98-12-075 at 54.

First, by ordering this fine of $2.010 million, we deter future similar safety violations and incentivize SCE and other utilities to work more diligently to ensure that a similar incident does not recur.

Second, we cannot ignore the fact that the fine is accompanied by other significant settlement terms such as the various safety enhancements to SCE's Contractor Safety Program which promotes public interest. SCE's contract workers will benefit from implementation of the Settlement Agreement's enhancements to the Contractor Safety Program. The enhanced Contractor Safety Program will improve the way SCE manages contractor safety and that, when serious safety incidents do occur, SCE will investigate the cause of the incident and take corrective action to significantly reduce the risk of similar incidents in the future. We recognize that it would have been difficult, through litigation, to craft similarly thoughtful and thorough ready-to-implement enhancements to the Contractor Safety Program comparable to those contained in the Settlement Agreement.

Third, by adopting this fine and the Settlement Agreement, all the proposed safety enhancements will be rolled out without further delay, and safer procedures and practices will be implemented sooner than if this OII were to be litigated and further implementation delay occurs.

Fourth, to settle this litigation, SCE has agreed to a penalty of $2.01 million. The only parties to this proceeding, SED and SCE, have cooperated to negotiate the terms of the Settlement Agreement. No unresolved contested factual or legal issues remain in the proceeding. The Settlement Agreement is in the public interest because, avoiding litigation, conserves Commission and party resources. We recognize that the public interest is served by reducing the expense of litigation, conserving scarce resources and allowing parties to eliminate the risk

of uncertain litigated outcome. Thus, by adopting this fine and the Settlement Agreement, it will avoid increased litigation while conserving public resources.

The Settlement Agreement and the proposed fine achieve these public interest benefits, and based on all the foregoing public interest benefits, the fine of $2.010 million is reasonable and appropriate under D.98-12-075.

4.3. Approval of Settlement Agreement Under Rule 12.1

In the previous Section 4.2 of this decision, we scrutinized the proposed fine amount, in the context of the Settlement Agreement, and found the proposed fine reasonable under D.98-12-075 five-factor analysis. As discussed below, we now turn to the whole of the Settlement Agreement to discuss how it addresses all issues in this proceeding and meets the requirements of Rule 12.1(d) of the Commission's Rules that it is reasonable in light of the whole record, consistent with law, and in the public interest.

4.3.1. Issues within the Scope of the Huntington Beach OII

By this Settlement Agreement which consists of $2.010 million in fine, admissions and comprehensive safety enhancements concerning SCE's contractors and subcontractors, the issues within the scope of this proceeding (set in the Huntington Beach OII and later confirmed in the Assigned Commissioner's Scoping Memo Ruling) have been adequately addressed.

The Assigned Commissioner's Scoping Memo Ruling provides that the purposes of this investigation proceeding is to examine SCE's actions and omission's surrounding the Accident,[25] determine appropriate corrective measures, if appropriate,[26] and impose fine or other remedies, if appropriate.[27]

---

[25] *See, supra*, fn. 11.

[26] *See, supra*, fn. 12.

Here, SED's Report evidences SED's careful investigation of SCE's actions and omission's surrounding the Accident, including SED's recommendations. Although SCE does not make specific admissions of violating any particular law or rule, for compromise and settlement purposes, SCE's admissions of the underlying facts (discussed above) in the Settlement Agreement adequately addresses the first two issues within the scope of this proceeding, which are: (1) review SCE's compliance with the applicable safety laws, GOs, regulations and rules including, without limitation Code §§ 451, 314, and 582; and (2) examine whether any of SCE's acts or omissions contributed to the Accident.

Also, prior to our institution of this OII, SCE had voluntarily adopted and implemented numerous corrective measures and safety enhancements. SCE made even further commitments to adopt additional safety measures beyond those already implemented in the Settlement Agreement. SED opines that SCE's commitment to corrective actions in the Settlement Agreement is consistent with those measures taken in the recent comparable safety case, in PG&E Kern Power Plant Fatality proceeding. This component of SCE's Settlement Agreement sufficiently addresses the second set of issues within the scope of this proceeding, which are: (1) review what actions SCE have taken, or should take, to prevent another incident from occurring (including an examination of whether "industry best practices" exist and, if so, whether SCE has incorporated these practices into its operations); and (2) determine the necessary breadth of those actions, including whether they should be area-specific or system-wide.

Lastly, as discussed in detail in foregoing Section 4.2.3 of this decision, the proposed fine of $2.010 million is appropriate under the circumstances and

---

[27] *See, supra*, fn. 13.

addresses the last remaining issue[28] within the scope of this proceeding, which is: whether any fines or penalties should be imposed on SCE for any possible violations that are proven in this investigation.

4.3.2. Settling Parties' Positions

The Settling Parties also contend, the Settlement Agreement adopts a contractor safety enhancement plan that resolves each of the five recommendations in SED's Report by the end of 2017. To arrive at the Settlement Agreement, the Settling Parties have worked together, cooperatively, to understand the lessons learned from the Accident and develop enhancements to SCE's Contractor Safety Program that will improve the way SCE manages contractor safety at its job sites, investigates serious safety incidents, and applies the lessons learned throughout its business. In their jointly filed Motion, they contend approval of this Settlement Agreement will signal the Commission's endorsement of pro-safety collaborations as a highly effective means of promoting safety advancements.

The Settling Parties contend SCE's current Contractor Safety Program is already a significant improvement over the program that existed at the time of the Accident and the additional enhancements in the Settlement Agreement will further advance contractor safety for work performed on SCE's facilities. The Settling Parties contend it is unlikely that litigation would have resulted in ready-to-implement enhancements to the Contractor Safety Program comparable to those contained in the Settlement Agreement. Moreover, the Settling Parties

[28] Although the Huntington Beach OII and Scoping Ruling included another issue (review of whether SCE should have disclosed its Investigation Report and a list of documents SCE reviewed in its investigation to SED), as discussed in Section 2.4 of this decision, this issue is now moot.

contend the Settlement Agreement minimizes the time, expense, and uncertainty of further litigation.

In terms of the three components of the Settlement Agreement, the Settling Parties contend that:

1) The proposed fine of $2.010 million (a) is not excessive, (b) should be an amount that will effectively deter SCE from future similar accidents, (c) is reasonable and appropriate, under the particular facts surrounding this OII, (d) generally in line with the fine assessed in PG&E Kern Power Plant Fatality case, and (e) falls within a range that fairly reflects the facts involved and the differing legal positions of the Settling Parties when evaluated against the possible statutory fines and the uncertainty of the results of a fully litigated outcome;
2) SCE's admissions demonstrate accountability and responsibility for SCE's role in this tragic Accident; and
3) SCE's proactive safety enhancements (a) show true commitment to improve contractor and sub-contractor safety, (b) consistent with corrective measures adopted by PG&E in its Kern Power Plant Fatality case, and (c) will significantly improve SCE's evaluation of contractor and subcontractor safety practices and that SCE will apply lessons learned across the entire enterprise to significantly reduce the risk of similar incidents in the future.

4.3.3. Rule 12.1(d)

For the reasons stated above, including Sections 4.3.1 and 4.3.2 above, we find that the Settlement Agreement appropriately resolves the issues in the Huntington Beach OII; and the Settlement Agreement is reasonable in light of the record, consistent with law and precedent, and in the public interest. Therefore, the Settlement Agreement is approved and adopted, without modification.

As discussed, this Settlement Agreement includes a fine and safety program enhancements intended to avoid similar accidents in the future. SCE already and voluntarily improved its Contractor Safety Program after the Accident. SCE's additional proactive steps (by its commitments in the Settlement Agreement) toward an even more comprehensive Contractor Safety Program are also significant. Those pre-OII and post-OII conduct of SCE are mitigating factors we consider in approving the proposed fine here. We also note the safety benefits of SCE's agreed-upon further enhancements to its Contractor Safety Program in the Settlement Agreement; and these too mitigate against the need for the deterrent effect of a larger fine than that proposed here.

As discussed above, the Settlement Agreement, including the fine, is consistent with D.98-12-075 and Code §§ 2104.5, 2107 and 2108, and as discussed here, it is also consistent with *Snyder v. Southern California Edison Company*.[29] In *Snyder v. Southern California Edison*, SCE was found to have unlawfully delegated safety rule compliance and oversight responsibility to an independent contractor; and the California Supreme Court prohibited SCE from delegating to an independent contractor its responsibility for compliance with Commission safety rules and regulations governing activities that are a necessary part of its business as an owner and operator of utility facilities.[30]

Consistent with *Snyder v. Southern California Edison*, here, we are persuaded that the SCE's enhanced Contractor Safety Program will ensure a more effective on-going safety program at SCE to ensure SCE's compliance with its safety duties (concerning contractors and subcontractors.) With the

[29] 44 Cal.2d 793, 799-801 (1955).

[30] 44 Cal.2d at 799.

implementation of the Corrective Action Plan, this should reduce the likelihood of a similar incident happening in the future.

The proposed fine, the safety measures SCE proposes to implement and the admissions by SCE, all show that SCE has taken proper responsibility for its role in the Accident. SCE's workers, stretching to its subcontractors, around the state will benefit from these safety measures being implemented and it will provide them training to make them better aware of the risks involved with their work.

By this Settlement Agreement, SCE also accepts its role in this tragic Accident and takes away important safety lessons learned from it. Payment of the proposed fine will serve as a reminder and deterrence toward preventing similar tragedies in the future.

Finally, we recognize and give due weight to SED's recommendations, thoughtfully negotiated settlement terms and recommended fine amount of $2.010 million, as the appropriate set of remedies in this instance to promote public interest.

Under the Settlement Agreement, SED will continue to monitor SCE's implementation of its Contractor Safety Program to ensure the safety benefits are realized. The Settling Parties believe and we agree that the Settlement Agreement results in a reasonable outcome considering these precedents and the criteria discussed in this section. We therefore conclude that the Settlement Agreement is a fair and reasonable resolution of this OII, and is reasonable in light of the record, consistent with law, and in the public interest.

5. Categorization and Need for Hearing

The Hunting Beach OII categorized this proceeding as adjudicatory and determined that hearings might be required. No hearings have been held and

following the filing of the uncontested, all-party settlement, we find that no hearings are needed to resolve this proceeding.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

Findings of Fact

1. In October of 2015, SED issued SED Report of its investigation of the Accident, which occurred on September 30, 2013, at the Huntington Beach underground vault owned by SCE.

2. Brandon Orozco, an employee of SCE's subcontractor, died as a result of the Accident.

3. Following the Accident, SCE promptly investigated the Accident and voluntarily made important improvements in its contractor safety programs and incident investigation practices and procedures; SCE did so prior to the Commission's institution of this Huntington Beach OII; and these voluntary and pre-OII safety enhancements improved SCE's contractor safety programs well before this OII was instituted.

4. SCE's voluntary and pre-OII safety enhancements are amongst the mitigating factors we considered here in evaluating the reasonableness of the fine.

5. Based on SED Report of October 2015, the Commission initiated the Huntington Beach OII to investigate the Accident.

6. SCE and SED are the only parties to this proceeding, and they have negotiated an all-party settlement agreement to resolve all of the issues in the above entitled investigation proceeding (Settlement Agreement) and filed their Motion recommending it for our approval.

7. The three components of the Settlement Agreement are: SCE's agreement to pay a fine of $2.010 million; SCE's agreement to improve its safety practices and procedures; and SCE's admissions.

8. In their fine calculation, the Settling Parties used the number of days Mr. Orozco was employed by CAM, which was 67 days; and using 67 days, the total fine of $2.010 million, proposed and recommended by the Settling Parties, equates to a daily fine of $30,000.

9. As for safety enhancements, the Settlement Agreement builds on SCE's post-Accident and pre-OII voluntary safety enhancements, and requires numerous additional safety enhancements beyond those already adopted and implemented, (SCE's Corrective Action Plan), including SCE's agreement to (a) improve its processes for evaluating contractors and subcontractors through use of a TPA, expanded qualification criteria, and a special field monitoring program for contractors and subcontractors requiring expedited retention, (b) increase the frequency of observing contracted field work by SCE representatives or their designee; (c) perform CSQA to document implementation of contractual safety commitments; and (d) employ personnel with special safety training to conduct field observations and assessments of Tier 1 contractors.

10. In the Settlement Agreement, SCE admits that:

(a) PAR did not seek SCE's approval to subcontract work to CAM;

(b) When SCE later became aware that CAM was a PAR subcontractor, it did not object;

(c) SCE did not manage or oversee the work performed by the CAM crew;

(d) SCE did not evaluate Mr. Orozco's qualifications to perform work in accordance with accepted, safe practices;

(e) SCE did not evaluate Mr. Orozco's familiarity with its electric facilities, schematics and plans; and

(f) SCE did not provide specific instructions to Mr. Orozco on how he should safely perform work he was doing at the time the incident occurred.

11. SCE does not expressly admit that it is responsible for "ensuring" contractor safety.

Conclusions of Law

1. The Motion should be granted.

2. The Settlement Agreement should be approved and adopted, without modification.

3. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, consistent with Rule 12.1(d) of the Commission's Rules.

4. The Settlement Agreement adequately addresses all the issues in the scope of this proceeding, including SED's recommendations.

5. The Settlement Agreement is consistent with *Snyder v. Southern California Edison Company*.

6. The fine proposed in the Settlement Agreement is reasonable under D.98-12-075 five-factor analysis, Code §§ 2104.5, 2107 and 2108.

7. Upon comparison of the Huntington Beach OII Settlement Agreement to PG&E Settlement in the Kern Power Plant Fatality OII, and in view of the mitigating facts in this Huntington Beach OII, that were not present in the PG&E Kern Power Plant fatal accident case, the recommended fine of $2.010 million, is reasonable.

8. SED should monitor, as set forth in the Settlement Agreement, SCE's implementation of its Contractor Safety Program to ensure the safety benefits are realized.

9. Because the Settlement Agreement is a compromise of the parties' positions, SCE's general admissions here is adequate.

10. Nothing in this Settlement Agreement relieves SCE from any safety responsibilities imposed on it by law or Commission rules, orders or decisions, including SCE's long standing duties under *Snyder v. Southern California Edison Company*, which prohibits it from delegating to an independent contractor responsibility for compliance with Commission safety rules and regulations governing activities that are a necessary part of its business as an owner and operator of utility facilities.

11. The issue surrounding SCE's Investigation Report and assertion of, *inter alia*, attorney-client privilege and/or work-product doctrine is moot.

12. Hearings are not needed.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between the Safety and Enforcement Division and Southern California Edison Company, attached to this order as Appendix A, is approved and adopted, without modification.

2. The Joint Motion for Approval for Settlement Agreement filed by the Safety and Enforcement Division and Southern California Edison Company, on December 16, 2016, to resolve the issues in the herein proceeding, is granted.

3. Southern California Edison Company's Tier 1 Contractor Safety Program and revised Handbook for Contractors are approved and attached hereto as Appendix B and C, respectively.

4. Southern California Edison Company, as required under the Settlement Agreement approved in Ordering Paragraph 1, shall pay a fine totaling $2,010,000 to the State of California General Fund within ten days from the effective date of this order. Payment shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. SCE shall write on the face of the check or money order "For deposit to the State of California General Fund per Decision _____" with "Decision _____" being the Commission-designated number for today's decision.

5. All money received by the Commission's Fiscal Office pursuant to Ordering Paragraph 4 shall be deposited or transferred to the State of California General Fund as soon as practical.

6. The Safety and Enforcement Division shall monitor Southern California Edison Company's (SCE's) implementation of the corrective actions under the Settlement Agreement, including SCE's implementation of its Contractor Safety Program, to ensure the safety benefits are realized.

7. Hearings are not needed.

8. Investigation 15-11-006 is closed.

The order is effective today.

Dated _____, at San Francisco, California.

[NOTE: NO REVISIONS MADE TO APPENDICES A-C]